

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
HALL-KIMBRELL ENVIRONMENTAL)	Docket Nos. TSCA-(ASB)-
SERVICES, INC.)	VIII-90-26,
)	90-30 through 39
Respondent)	

ORDER GRANTING MOTION TO STAY

On May 10, 1993, the Complainant in the Region VIII cases filed a motion requesting a stay of the hearing on the suspect materials issue scheduled to begin May 18, 1993 in Kansas City. The grounds for the motion are that the parties have reached a settlement in principle in the Region VIII cases, and a Consent Agreement executed by the Respondent has been received by the Agency. This Consent Agreement has also been executed by the Complainant and has been sent for approval to the appropriate officials for Region VIII. The motion also advises that Region VIII personnel have indicated they will try to expedite the approval process. Complainant argues that Agency resources will be wasted by holding the hearing while the Regional VIII approval of the Consent Agreement is being obtained. Complainant, therefore, asks for a stay of the evidentiary hearing on the suspect materials issue.

On May 11, 1993, Respondent filed an objection to postponement of the May 18, 1993 hearing on the basis that the settlement in principle, even though signed by the Respondent, is not a settlement in fact. Respondent cites past difficulties in

its Region V case and notes ministerial problems that occurred in the Region II settlement. Respondent objects to a delay in the hearing because it has undertaken considerable expense to prepare its defense and have made arrangements for its witnesses to be available for hearing. Respondent suggests that the hearing could not be rescheduled until mid-September at the earliest.

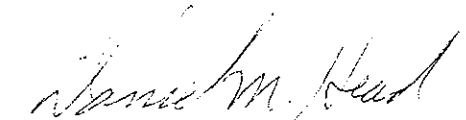
On analysis, the Complainant's position is better taken and it is unwarranted for the parties and the Presiding Judge to expend the further considerable time and expense of preparing for and possibly beginning an evidentiary hearing that will probably not be necessary. A Consent Agreement signed by both parties has been forwarded to Regional VIII for approval and there is no specific reason cited by the Respondent to indicate that the agreement might require technical or substantive revision. Moreover, there are several outstanding pre-hearing motions as well as extensive other trial preparation that must be undertaken if the hearing is not stayed. It is not warranted to proceed with this trial preparation, in addition to the travel time and expense, and perhaps even the taking of testimony from witnesses, when there is pending an executed document that would eliminate the need for all this activity,

Accordingly, the Complainant's motion for a stay is granted and the evidentiary hearing on the suspect materials issue set for May 18, 1993 in Kansas City is continued, to be rescheduled at a later date and location, if necessary. The Complainant is directed to file a status report by June 1, 1993, if the Consent

Agreement has not been approved. The status report shall indicate why there is a delay in the approval of the Consent Agreement in the Region VIII cases, and particularly shall indicate whether the Regional VIII officials have suggested any technical or substantive changes in the terms of the agreement.

The Regional Hearing Clerk for Region VII is requested to cancel the hearing facility and the court reporter secured in connection with the May 18, 1993 evidentiary hearing on the suspect materials issue.

SO ORDERED.



Daniel M. Head
Administrative Law Judge

Dated: May 12, 1993
Washington, DC

IN THE MATTER OF HALL-KIMBRELL ENVIRONMENTAL SERVICES, INC.

Respondent

Docket No. TSCA-(ASB)-VIII-90-26, 90-30 through 39

CERTIFICATE OF SERVICE

I certify that the foregoing Order Granting Motion to Stay, dated May 12, 1993, was sent in the following manner to the addressees listed below:

Copy by Pouch Mail to:

Joanne McKinstry
Regional Hearing Clerk
U.S. EPA, Region VIII
999 - 18th Street
Denver, CO 80202-2405

Copy by Regular Mail


Facsimile Process to:

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Aurora M. Jennings
Legal Staff Assistant
Office of the Administrative
Law Judges

Dated:

May 12, 1993
Washington, D.C.